

SUPERIOR COURT  
OF THE  
STATE OF DELAWARE

E. SCOTT BRADLEY  
JUDGE

SUSSEX COUNTY COURTHOUSE  
1 The Circle, Suite 2  
GEORGETOWN, DE 19947

July 15, 2009

N440 STATE MAIL  
Breyon J. Baine  
SBI No.  
James T. Vaughn Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**RE: *State of Delaware v. Breyon J. Baine***  
**Def. ID No. 0703024260**  
**Letter Memorandum**

Date Submitted: May 5, 2009

Dear Mr. Baine:

This is my decision on your Motion for Postconviction Relief. You were charged with Robbery in the First Degree, Burglary in the First Degree, Assault in the Second Degree, Theft of a Firearm, Conspiracy in the Second Degree, Criminal Mischief, Possession of a Deadly Weapon by a Person Prohibited and nine counts of Possession of a Firearm During the Commission of a Felony. The charges arose out of a home invasion by you and four other men. You and several of the other men went into a house occupied by Brian Stone and hit him in the face with a gun butt and then took a rifle, cell phone and checkbook that were in the house. Three of the other men pled guilty to various charges arising out of the incident and agreed to testify against you. The fourth man was your brother. He went to trial and was convicted of Robbery in the First Degree, Assault in the Second Degree, Theft of a Firearm and Conspiracy in the Second Degree. You were the last of the five men to resolve your case. You pled guilty to Possession of a Firearm During the Commission

of a Felony, Robbery in the First Degree, Assault in the Second Degree, Theft of a Firearm and Conspiracy in the Second Degree. I sentenced you to 31 years at Supervision Level V, suspended after six years and six months at Supervision Level V for probation. You were represented by E. Stephen Callaway, Esquire. This is your first motion for postconviction relief and it was filed in a timely manner.

You now allege that Callaway (1) did not file any pre-trial motions, (2) did not seek the dismissal of duplicate charges in the indictment, (3) convinced you to take a plea even though he knew it was not in your best interest to do so, and (4) knew that the other perpetrators' statements were inconsistent, but did not challenge them. You also allege that because of Callaway's alleged failures that you were left with no choice but to plead guilty instead of going to trial. Callaway has filed an affidavit responding to your allegations. Given the nature of your allegations, I have concluded that a hearing is not necessary.

The United States Supreme Court has established the proper inquiry to be made by courts when deciding a motion for postconviction relief.<sup>1</sup> In order to prevail on a claim for ineffective assistance of counsel pursuant to Superior Court Criminal Rule 61, the defendant must show: "(1) counsel's representation fell below an objective standard of reasonableness; and (2) counsel's actions were so prejudicial that, but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial."<sup>2</sup> Further, a defendant "must make and substantiate concrete allega-

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<sup>1</sup> *Strickland v. Washington*, 466 U.S. 668 (1984).

<sup>2</sup> *State v. Thompson*, 2003 WL 21244679 (Del. Super. April 15, 2003), *citing Strickland v. Washington*, 466 U.S. 668 (1984).

tions of actual prejudice or risk summary dismissal.”<sup>3</sup> It is also necessary that the defendant “rebut a ‘strong presumption’ that trial counsel’s representation fell within the ‘wide range of reasonable professional assistance,’ and this Court must eliminate from its consideration the ‘distorting effects of hindsight when viewing that representation.’”<sup>4</sup>

### **1. Pre-Trial Motions**

You allege that Callaway should have filed pre-trial motions, including a motion to suppress evidence. However, you do not identify the pre-trial motions that Callaway should have filed or state the legal basis for filing them. You also do not identify the evidence that should have been suppressed or state the legal basis for suppressing it. Your failure to state your allegations with particularity makes them conclusory and, as such, without merit and subject to summary dismissal.

### **2. Duplicate Charges**

You allege that Callaway should have filed a motion to dismiss duplicate charges in the indictment because it, in your view, charged the same conduct in a number of different ways. However, you do not identify which charges should have been dismissed or state the legal basis for doing so. Once again, your failure to state your allegations with particularity makes them conclusory and, as such, without merit and subject to summary dismissal.

### **3. Plea Negotiations**

You allege that Callaway convinced you to take a plea even though it was not in your best interest to do so. Your allegation is based on your belief that (a) there was no evidence against you, (b) Callaway lied to you by telling you that you would get the best plea and fabricated evidence in

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<sup>3</sup> *State v. Coleman*, 2003 WL 22092724 (Del. Super. Feb. 19, 2003).

<sup>4</sup> *Coleman*, 2003 WL 22092724, at \*2, quoting *Strickland*, 466 U.S. at 689.

order to get you to take a plea, and (c) Callaway was more interested in getting you take a plea than in going to trial. Your allegations are both conclusory and contrary to the undisputed facts of the case. While it is true that you did not have any of the stolen property or a gun in your possession when you were arrested, the other perpetrators that pled guilty were willing to testify at trial that you hit Brian Stone with a gun butt. I also note that in your Motion for Postconviction Relief that you admitted that you went into Brian Stone's house. Your allegation that Callaway lied to you and fabricated evidence is similarly unfounded. Callaway, in his affidavit, denied your allegation that he told you that you would get the best plea of all of the defendants. Given that the prosecutor believed that you were the most culpable of the five perpetrators and that your plea agreement had no agreed-upon sentence recommendation, there is simply no reason to believe your allegation. Your allegation that Callaway fabricated evidence in order to get you to take a plea is also unfounded. Once again, you have failed to identify the evidence that Callaway allegedly fabricated. When Callaway told you that it was in your best interest to take a plea instead of going to trial because you would probably be convicted of all the charges and spend even more time in jail, he was merely giving you his honest assessment of the State's case against you. Given what happened to your brother at trial, it certainly appears that Callaway's assessment of your case was accurate.

#### **4. Statements**

You allege that Callaway knew that the other men involved in this incident gave conflicting statements, but did not contest them. This allegation is true, but it does not mean anything because you voluntarily took a plea. This case was no different than other cases that involve multiple perpetrators. When the other men initially spoke to the police, they all tried to minimize their participation in the crimes, arguing that they were only a lookout or drove the getaway car.

Eventually, a picture emerged of everyone's role in the incident with you as the most culpable perpetrator. You could have challenged their conflicting statements if you went to trial, but you chose not to do so. Having concluded that there is no merit to your other allegations, I have concluded that your decision to plead guilty and not go to trial was voluntary.

**Conclusion**

I have concluded, given the conclusory and unfounded nature of your allegations, that Callaway acted reasonably and that his actions did not leave you with no choice but to plead guilty instead of going to trial. Your Motion for Postconviction Relief is denied for the reasons set forth herein.

IT IS SO ORDERED.

Very truly yours,

E. Scott Bradley

cc: Prothonotary's Office  
Department of Justice  
E. Stephen Callaway, Esquire